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THE EMPLOYMENT ATTORNEYS

June 14, 2013

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Catherine O'Hagan Wolfe, Clerk of the Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Roach v. T.L. Cannon Corp.*, No. 13-1383 (pet. filed Apr. 12, 2013)  
Supplemental Authority Letter under Rule 28(j)

Dear Madam Clerk:

Plaintiffs-appellants respectfully call the Court's attention to the recent decision in *Leyva v. Medline Industries Inc.*, \_\_\_ F.3d \_\_\_, 2013 WL 2306567 (9th Cir. 2013).

*Leyva* squarely rejects the proposition, embraced by the district court in this case, that the need for individualized damages calculations defeats class certification. *See id.* at \*3 ("[T]he presence of individualized damages cannot, by itself, defeat class certification under Rule 23(b)(3)."). *Leyva* recognizes that, because "damages determinations are individual in nearly all wage-and-hour class actions," to hold otherwise would effectively bar the certification of virtually all wage-and-hour classes. *Id.*

The Ninth Circuit also considered the Supreme Court's recent decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013), which was the basis for the district court's decision to deny certification here. *Comcast*, the Ninth Circuit rightly noted, stands for the "the plaintiffs must be able to show that their damages stemmed from the defendant's actions that created the legal liability," *Leyva*, 2013 WL 2306567, at \*3 — not the proposition, adopted by the district court here, that plaintiffs must offer a "model of damages susceptible of measurement across the entire putative . . . class." Dkt. 114 (Pet. App. 1, at 9-10).

By rejecting the rule the district court applied in this case and by distinguishing *Comcast*, *Leyva* bolsters plaintiffs' "substantial showing that the district court's decision is questionable," *In re Sumitomo Copper Litig.*, 262 F.3d

134, 139 (2d Cir. 2001), which is one of the reasons why review is warranted here. *See* Pet. 10-16.

For the foregoing reasons, as well as those discussed in plaintiffs-appellants' Petition, this Court should grant the petition to appeal under Rule 23(f).

Dated: June 14, 2013

Respectfully submitted,

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